

# THE MYSORE LEGISLATIVE ASSEMBLY.

FORTIETH DAY.

*Wednesday, 19th April, 1961.*

The House met in the Assembly Hall, Vidhana Soudha, Bangalore, at Thirty Minutes past Eight of the Clock.

Mr. SPEAKER, (Sri S. R. KANTHI, B.A., LL.B.) in the Chair.

## NOTICE Re: DISQUALIFICATION OF MEMBER.

Mr. SPEAKER.—I will take up the question of disqualification of one of the members. As all Hon'ble Members know Sri U.M. Madappa has tabled a question of disqualification of the Hon'ble Member Sri T. Subramanya, but I am sorry to say that there is a mistake in the notice that he has given. He has mentioned article 192 (1)(e) of the Constitution. It is not correct and I think it should have been Article 191 (1)(e).

The Hon'ble Member Sri U. M. Madappa has written to me raising a question of disqualification of another Hon'ble Member of the House Sri T. Subramanya. The communication reads as follows:

“Under Article 192(1) of the Constitution, I hereby raise the question that Sri T. Subramanya has become disqualified for being a member of the Legislative Assembly under Article 192 (1)(e) read with section 7(d) of the Representation of the people Act (Act XLIII of 1951) by reason of the fact that he has a share and an interest in the contract for supplying metal, etc., for Hasssan, Mangalore, Huliya and Chikkanyakana Halli Road, placed by Government of Mysore with Sri T. S. Visweswariah son of Sri T. Subramanya of which the undivided Hindu family of Sri T. Subramanya is a partner in business.

I request that you will be pleased to refer this question for the decision of the Governor”.

Article 191 of the Constitution relates to disqualification for being chosen as and for being a member of the Legislative Assembly or the Council of a State. Article 192 of the Constitution reads as follows:

“(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

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“(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion”.

According to article 192 it is only if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications, that the question should be referred for decision of the Governor. I have, therefore, to decide whether a question arises at all as to whether the Hon'ble Member Sri T. Subramanya has become subject to any of the disqualifications. The communication to me refers to article 191 clause (1)(e) which relates to disqualification by or under any law made by parliament. The law made by parliament referred to in the communication is section 7(d) of the Representation of the people Act, 1951. Under this provision if there subsist a contract entered into in the course of his trade or business by a member with the appropriate Government for the supply of goods to or for the execution of any works undertaken by that Government, the member becomes disqualified. It is not contended that the Hon'ble Member Sri T. Subramanya is himself a party to any subsisting contract, but what is contended is that Sri T. S. Visweswariah son of Hon'ble Member of Sri T. Subramanya has a contract with the Government for supplying metal, etc., and that he and his father are members of an undivided Hindu family and that, therefore, the Hon'ble member Sri T. Subramanya must be deemed to be subject to the disqualification under the constitution.

In this connection it is interesting to note that sub-section (2) of section 9 of the Representation of the people Act, 1951, which ran as follows :

“(2) For the avoidance of doubt it is hereby declared that where any such contract as is referred to in clause (d) of section 7 has been entered into by or on behalf of a Hindu undivided family and the appropriate Government, every member of that family shall become subject to the disqualification mentioned in the said clause: but where the contract has been entered into by a member of a Hindu undivided family carrying of a separate business in course of such business, any other member of the said family having no share or interest in that business shall not become subject to such disqualification”.

has subsequently been omitted; However, since a specific allegation has been made that the Hon'ble Member Sri T. Subramanya has a share and an interest in the contract. I would like to adopt the procedure which was adopted in the Legislative Assembly of the old State of Mysore when a similar communication was received by the Speaker. On that occasion, it was stated that while no such procedure was prescribed for

dealing with the matter, it was necessary that the Speaker should, on a *prima facie* examination of the facts presented to the House decide whether a case for referring the question of disqualification to the Governor would arise or not. I would, therefore, now call upon the Hon'ble Member Sri T. subramanya to say whether he admits that he is subject to the disqualification mentioned in the communication or not. I would have also called upon the Hon'ble Member Sri Madappa to substantiate what he has stated in his communication, but the letter is so clear that I do not think any further elucidation is necessary. If he wants to have his say, I have no objection. That is my opinion because his notice is quite clear. After the statement of Sri Subramanya, Sri Madappa will be given a chance. I now call upon the Hon'ble Member Sri T. Subramanya to tell me whether his son Sri T. S. Visweswariah has a subsisting contract with the Government of Mysore in the course of his trade or business for the supply of goods or for the execution of any works undertaken by the Government and, if so, whether he, either as a member of an undivided Hindu family with his son or in any other capacity, has a share or interest in such contract.

Sri M. RAMAPPA.—I want to know whether you will now allow at this stage a full dress debate on the merits of the case or we will have to discuss only the procedure.

Mr. SPEAKER.—There is no question of procedure being discussed because a procedure has been laid down in the old Mysore Legislative Assembly proceedings. So there is no question of any new procedure being adopted, but so far as this questions is concerned, the Hon'ble Member Sri Subramanya will make his own remarks and after him I will give a chance to Sri U. M. Madappa to have his say.

Sri KADIDAI. MANJAPPA (Minister for Revenue).—Should he not make out a *prima facie* case.

Mr. SPEAKER.—The notice is clear. He says that Sri T. Subramanya is a member of the undivided family and that he is a partner in the business.

†Sri T. SUBRAMANYA (Minister for Local Self Government).—Myself and my son are not undivided, Myself, my brother, my son, and my brother's daughter are all divided through a registered partition deed. Therefore, it is not correct to say that I and my son Mr. T. S. Visveswariah are undivided. I am going to produce a copy of the partition deed for a perusal of the Chair. It is for the Chair to examine it and if there is a *prima facie* case, to take such steps as are necessary afterwards. So I cannot be subject to any cross-examination here. I will produce a copy of the document.

Sri M. RAMAPPA.—Are not the members entitled to know it. When a discussion is allowed, is it proper that it is only for the Chair.....

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†Indicates that the remarks or speeches have not been revised by the Member concerned.

Mr. SPEAKER.—It is not a question for the Hon'ble Member, it is a question for me to decide.

Sri M. C. NARASIMHAN.—I will just seek a clarification from you. The question of *prima facie* case and all that does not arise.

Sir, the question of *prima facie* case does not arise. You said the other day that you have sent the communication to the Governor.

Mr. SPEAKER.—No, no. Yesterday, I made it clear that if I had said that I had already sent it to the Government, it must be an obviously a mistake. I think I have said that I will refer it to the Governor. I made this point clear yesterday itself.

Sri M. C. NARASIMHAN.—If this is the procedure, I want to submit one thing before the Minister wants to say anything. Article 192 does not say that a *prima facie* must arise. It simply says 'if any question arises' The question has arisen. Supposing Mr. Madappa wants the case to be sent to the Governor. Even the e, the Governor has no discretion under the Constitution. He must refer the matter to the Election Commission.

Sri KADIDAL MANJAPPA.—Sir, is discussion permitted on this?

† Sri M. C. NARASIMHAN.—Only about procedure I am speaking I am not worried about the case. Referring to article 192 Basu's Commentary says as follows;

"These words indicate disqualification which can be referred to the Governor under the present Article is a disqualification arising subsequent to the election and not existing at the time of election."

(2) "Shall not according to such opinion". It would appear from these words that the Governor has no discretion to decide such question contrary to the opinion of the Election Commission. Thus, when an Election Tribunal has adjusted a member to be guilty of a corrupt practice, the Governor cannot leg timately refust to act according to the decision, etc...

So, sir, from this it is very clear that there is no discretion vested even in the Governor. When that is so, how can the discretion vest in in the Chair? To determine whether there *prima facie* or not does not vest in the Chair. I am not able to understand it. Rules do not provide for you to determine the *prima facie*. If you take the responsibility of determining as to whether a *prima facie* case has been made out by Mr. Madappa, I think it is taking too much on your shoulder. We only request you to act as the Agent to communicate our point to the Governor.

Sri M. RAMAPPA (Harihar).—Sir, this is a very serious matter. Here, there is no necessity for a debate. The point is, whether the Speaker has the discretion or not. Sir, similar motion was made by

Hon'ble Member Sri T. Subramanya on previous occasion against Sri VENKATA Reddy. Then, no discussion was allowed in this House and it was referred....

Mr. SPEAKER.—No; it was not referred. He did not insist on such a position because it was the case of an opposition member.

Sri M. RAMAPPA.—Sir, law is the same whether it is the opposition member or any other member.

Sri C. K. RAJIAH SETTY (Chicknaikanhalli).—Sir, apart from the partition deed, there are other facts to prove as to how far it is genuine. It is better that you refer it to the Governor.

Sri C. J. MUCKANNAPPA (Gubbi).—Sir, it is not right to go into the merits of the case.

Mr. SPEAKER.—Does he want me to go beyond the purview of the notice? If we want me to do so, he is asking me to do a thing which I cannot. The notice is clear that the Hon'ble Member if a Member of the undivided family. Beyond that, I cannot take notice of the other facts unless he gives another notice.

Sri C. K. RAJIAH SETTY.—There are other evidences for it.

Mr. SPEAKER.—I am not concerned with the evidence; That will be gone through by the Election Commission; I concerned only with the facts. I am not the Election Commission.

Sri C. K. RAJIAH SETTY.—So, the Election Commission should conduct the hearing.

Mr. SPEAKER.—On what facts? The point is, whether the Hon'ble Member Sri T. Subramanya is a member of the undivided family and he is a partner in the business.

Sri G. VENKATAI GOWDA.—Sir, a responsible statement is made. Until the contray is proved, it must be taken that the statement is correct.

Mr. SPEAKER.—That is exactly what I am doing. A very responsible statement is made by Sri Madappa. For that I am asking the Hon'ble Member on the other side. He may rebut it. Members are not giving me an opportunity to say what it is.

I will state the whole thing. I am following the same procedure that was followed in 1948.

Sri M. RAMAPPA.—Sir, under 192 (1), the wording is: "the question shall be referred". That is my point. I request you not to express your opinion because I will not be free to express my opinion after you express your opinion.

Mr. SPEAKER.—Whatever I state, unless I say that I give a ruling, he need not be bothered about it. I will say that this is my ruling and then he will be silenced.

(Mr. SPEAKER)

In the first place, the question has been referred to me send it to Governor. If the question had not been referred to me but sent to the Governor direct it was a different matter and I do not know whether such a procedure is possible. Since it has been referred to me, I must find out whether there is a real question, a question which involves a *prima facie* case. We cannot have one rule for one person and another rule for another. In 1948 a ruling was given in the case of Sri J. Venkatappa and Sri Venkata Reddy. That ruling is very pertinent to the present question.

"When a notice of the kind in question is issued by the Speaker, he has first to consider whether any question as contemplated under article 192 (1) of the Constitution can be said to have been raised."

So, he must find out whether such a *prima facie* case has been raised. It is only if he is satisfied that such a question arises, that he has to make a reference to the Governor. In 1948 the Speaker has made it very clear. In the present case, I want to find out whether a question has arisen. That is what I am trying to do. The question must have a *prima facie* value.

9-00 A.M.

† Sri M. RAMAPPA.—When Mr. Venkatapp's question came up whether the Chair has any discretion or not was not a substantial issue. That by itself was not an issue. That question was not raised: that the Speaker has no discretion but to refer was not raised by any Hon'ble Member. It was only incidentally that the Speaker said that the question must arise. Now, here is a case where a specific issue has been raised that the Speaker has no discretion but to refer the matter to the Governor. Article 192 (1) says specifically that the question shall be referred. Here there is absolutely on discretion for the Speaker to decide the matter himself for the simple reason that the Speaker here cannot sit as the Election Commission. The parties here have taken certain stands with reference to certain documentary evidences. Here, a Hon'ble Member has stated that he has a partition deed. On this side we have certain documentary evidence. The Speaker cannot sit in judgement over the value of this evidence. It is for this reason the Constitution specifically provides that the matter shall be referred to the Governor in which case the Governor will in turn refer to the Election Commission which will examine the matter thoroughly. That is the reason why the Speaker has not been given any power to decide the matter here on the spot. How can the Speaker sit as the Court or the Election Commission to take evidence and give a judgement.....

Mr. SPEAKER.—That is very uncharitable. I am not sitting as a judge.....

Sri M. RAMAPPA.—I am expressing my opinion on certain legal aspects. The Speaker should not take it personally. I am sometimes say that your ruling may not be correct. We also say that such and such judgement is not a good judgement. Merely because some ruling has been given in Venkatappa's case, it does not mean that every ruling is good. It may not be a good ruling and we may request the Chair to revise the opinion in view of legal aspects of the case.

Mr. SPEAKER.—He is trying to argue in a way that is not worthy of a member of this House. He can submit to the Chair that the ruling in that case may be revised but he cannot say that it is a bad ruling.

Sri M. RAMAPPA.—I did not say that it is bad. I said that it is not good ruling.

Mr. SPEAKER.—He may say that it is not a correct ruling. He cannot say that it is not a good ruling.

Sri M. RAMAPPA.—I did not mean any disrespect to the Chair. Far from it.

Mr. SPEAKER.—But he must use correct words. He cannot say all that. He cannot draw any analogy between the Court and the House. He can only say that it is not a correct ruling.

Sri U. M. MADAPPA.—Sir, he is only trying to help the Chair.....

Mr. SPEAKER.—What kind of help is it? He cannot say whatever he likes. He must use his words in a parliamentary way.

Sri M. RAMAPPA.—I do not think I am using any unparliamentary word. I honestly believe.....

Mr. SPEAKER.—I say that he is using words which are not worthy of a Member.

Sri M. RAMAPPA.—Which is the word which is unparliamentary Sir. I am very sorry because I am calmly submitting to the Chair.....

Mr. SPEAKER.—There is no question of calmness. He must use proper words.

Sri M. RAMAPPA.—I thought there is nothing wrong in the words I used.

Mr. SPEAKER.—I say it is wrong. What does he say?

Sri M. RAMAPPA.—I already said I did not mean any disrespect to the Chair. Before you drew my attention to the point I said I did not mean any disrespect to the Chair.

Now, I submit that the Speaker has no discretion. He has no powers to decide the matter on the merits of the case. He has to refer it to the Governor who will in turn refer it to the Election Commission.

Sri G. VENKATAI GOWDA.—The reference is sought to be made through the Speaker. Article 195 (1) provides for it. Supposing it is directly referred then the question of finding out whether it is a *prima facie* case or not would not arise. Suppose I make a reference directly

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to the Governor he has to make a reference to the Election Commission. What is being done now is that a reference is sought to be made through the Speaker. That is the only difference. Therefore I submit that there is no question of the Speaker trying to know whether there is a *prima facie* case or not. That is our humble submission.

MR. SPEAKER.—I would submit to the Members that I understand their feelings in this respect. I have to go by the rules of procedure and by the provisions in the Constitution. I have never said that I am going to sit as a judge or this House is a court of law. I have never said that I am going to decide the case by taking evidence. As regards the submission made by Hon'ble Member Sri Ramappa,—which he put in a very strong language, for which I am really sorry; he ought to have put in a very mild language the same thing—in the last case what happened has not been challenged at all. At that time I myself gave the ruling that Sri J. Venkatappa and Venkata Reddy, who were Presidents of Municipalities, were functioning in that capacity even before the general elections for which they contested. The question was whether in that case there was *prima facie* case or not for referring it to the Government. I will read the passage:

“Hon'ble Members will thus see that the decision of the Supreme Court I have referred to above is directly point. Even if the office of President of a Town Municipal Council would be an office of profit disqualifying a member, a question which it is not necessary to consider now, so long as a person was elected or appointed as President of the Town Municipal Council long before his election to this House, no question arises within the meaning of Article 192(1) which would require to be referred to the Governor. In the circumstances, no action will be taken on the two complaints of the Hon'ble Member Sri T. Subramanya and Sri K. S. Suryanarayana Rao.

“After the debate took place in the Assembly on the 19th, Hon'ble Member Sri M. C. Narasimhan gave notice of a similar complaint with reference to Hon'ble Member Sri Muniraju. What I have stated above will apply in this case also and that notice will also be filed.”

In that case I have made it clear that there should be a real question, a question which bears a *prima facie* case. Unless there is a question I cannot refer it to the Governor. I had in that case not made up my mind. I did not know. I do not accept the words of Hon'ble Sri T. Subramanya on its face. I will examine whether what he said is correct. I have also given an opportunity to such of the members who want to look into the records to do so. I am not in a hurry. I will give all opportunities to the members to look into the records. They are with the Secretary or in the office of the Legislature.....



Sri T. SUBRAMANYA.—I do not think any member is entitled to look into the records.....

Mr. SPEAKER.—Anyway if he wants to say anything after looking into the records, I will allow it. I must find out whether there is a *prima facie* case or not. In that case I must give an opportunity to both sides.

Sri V.P. DEENADAYALU NAIDU.—Sir, that raises a fundamental issue. The question of procedure as to whether a question arises and how a member ought to be satisfied and the procedure laid down by the Speaker now requires further clarification and examination I appreciate that point. Whether the question raised should be referred to the Governor or that the Speaker himself must decide is there but we should certainly go into the question of procedure of a member being satisfied. Supposing he looks into the records and comes and says that he is not satisfied what will you do. He may challenge the records. I do not agree with that. Many complicated issues would arise that requires our consideration. Is the Speaker going to allow this. Let us be convinced of the procedure and adopt that. I am very certain on these matters that once the procedure is not clearly defined, it would lead to controversial, prolonged and complicated issues.

I would very humbly request the Speaker to kindly lay down certain procedure even with regard to examination if there is any possibility. As far as we see, there is no such thing contemplated anywhere. I have gone through the whole thing and I find there is no such procedure contemplated anywhere. Therefore it requires that the Speaker must define it and define it in the best interest of every member of the House.

Sri KADIDAL MANJAPPA.—It is the Speaker that has to apply his mind over the matter and find out whether a question has arisen or not and it is not for the other members to satisfy whether the documents produced on this side or that side are correct or not. Therefore it is not the House in general or the other members that will have to satisfy themselves whether the question has arisen or not. It is the Speaker, who is the custodian of the privileges of this House and of the individual members, who has to decide whether a question has arisen or not. Mere allegation does not amount to saying that a question has arisen.

Mr. SPEAKER.—Of course, it is not for the members to be satisfied whether there is a *prima facie* case or not. It is for the Speaker to be satisfied about it and that is exactly what I am trying to do. In that case if I look into the records and I find there is evidence to the contrary to show that there is a *prima facie* case to refer to the Governor then I must give an opportunity to the other side also. The procedure is very simple. The procedure is that the Speaker wants to know whether there is a *prima facie* case to refer to the Governor. In

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that case, I have made it clear that the Hon'ble Minister has a right to give me the records and explain his position. That he will do. In case there is evidence to the contrary, I must also allow other members to produce it and that is on account of the fact that I have got to satisfy myself that there is a *prima facie* case. I have not been able to understand why there should be any objection to this procedure. This is a procedure that we are evolving and we are not sure of the procedure in the other State Legislatures because there no such cases have arisen. Here the main principle is that the Speaker must know that there is a question which arises in this case.

Sri G. VENKATAI GOWDA.—Suppose he produces a document and it is challenged. Then according to the procedure that you have laid down we will have to go into the details.

Mr. SPEAKER.—How can he in any way challenge a registered document bearing date and all that? If that can be done as a lawyer he can produce evidence to challenge it.

Sri M. RAMAPPA.—What happened after the partition deed was registered also has to be taken into consideration. There might have been a reunion.

Sri H. V. KOUJALGI.—The question of laying down a procedure in such matters is the point at issue since there is no such procedure laid down.

ಅಧ್ಯಕ್ಷರು.—ಈ ಪ್ರೊಸೀಜರ್ ಈಗೇನೂ ಹೊಸದಲ್ಲ. ಹಳೆಯ ಮೈಸೂರು ಅಸೆಂಬ್ಲಿಯಲ್ಲಿ ಈ ಪ್ರೊಸೀಜರ್ ಅನ್ನು ಅನುಸರಿಸಿದೆ. 1958ನೇ ಇಸವಿಯಲ್ಲಿಯೇ ಈ ಪ್ರೊಸೀಜರ್ ಅನ್ನು ಅನುಸರಿಸಲಾಗಿದೆ.

Sri H. V. KOUJALGI.—The only question is whether it is correct to ask all of us in the Assembly after the Hon'ble Minister makes a statement as if he is being cross-examined in a court.

Mr. SPEAKER.—As a good lawyer please tell me how should I be convinced whether there is a *prima facie* case.

Sri H. V. KOUJALGI.—You please hear me.

Mr. SPEAKER.—He knows as a good lawyer even in cases in a court of law a Judge has to hear both sides to understand the whether there is a *prima facie* case.

Sri H. V. KOUJALGI.—I am only asking which procedure will be correct, whether to make the Minister make an oral statement all of a sudden or two give him a copy of the document and allow him to put in a written statement.

Mr. SPEAKER.—This case has been fixed up for today. There is no question of anything being done all of a sudden in this case. In 1958 also this was the very same procedure that was adopted.

Sri H. V. KOUJALGI.—Even then what I want to submit is this.

Mr. SPEAKER.—I am not going to hear the case. I am only trying to understand whether there is any *prima facie* case.

Sri H. V. KOUJALGI.—It is as good as hearing in open court.

Mr. SPEAKER.—This is a repetition of the procedure that was adopted in the old Mysore Legislative Assembly. This is also a repetition of the procedure that was adopted in 1958. At that time no objection was taken. Please tell me what procedure should I follow. Should I brush aside the procedure that was followed in that case?

Sri H. V. KOUJALGI.—He should be asked to give his statement in writing by giving a copy of the allegation against him and then you should come to a conclusion.

Mr. SPEAKER.—So he is trying to tell me that I should change the procedure.

Sri C. J. MUCKANNAPPA.—Sir, after considering the whole matter you have already come to the conclusion that matter should be kept open and that members who are interested can come and examine the records. When you have concluded in this way, there is no point in Members trying to reopen it.

Mr. SPEAKER.—Now we go to the next item of business.

Sri C. J. MUCKANNAPPA.—What about my privilege motion?

Mr. SPEAKER.—I am giving a ruling.

## MYSORE HEREDITARY VILLAGE OFFICES ABOLITION BILL, 1959. AS REPORTED BY JOINT SELECT COMMITTEE.

*Motion to consider—Debate—(contd.)*

† Sri S. D. KOTHAVALA (Chikodi).—Mr. Speaker, Sir, I rise to support in a general manner the principle underlaying the report of the Joint Select Committee. Question of law and constitution were raised by Hon'ble Members when the Minister was making his introductory speech, but in view of the explanation given by him I do not see any point in repeating those very constitutional points and legal objections. The question now arises whether there is necessity for abolition of the so called hereditary village offices.

As a matter of fact when the Bill was referred to the Joint Select Committee, the principle of the Bill, namely, the abolition of the hereditary village offices was accepted by this House and therefore, that question would not be taken up; but unfortunately, some of the Honourable Members, particularly Dr. Nagur raised the question again, whether it is feasible to abolish these hereditary offices. Now as the question is raised, I would say a few words in regard to that matter.